

REMARKS

Claims 1-4 and 6-14 are pending. By this Amendment, the specification is amended; claim 5 is canceled without prejudice or disclaimer; and claims 1-3, 6 and 12-14 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Claims 1, 2 and 12-14 were rejected under 35 U.S.C. § 102(b) over the English abstract of Ito (Japanese Patent Application Publication 62-204527). The rejection is respectfully traversed.

MPEP § 706.02 II states:

Prior art uncovered in searching the claimed subject matter of a patent application often includes English language abstracts of underlying documents, such as technical literature or foreign patent documents which may not be in the English language. When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. **Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art.** See *Ex parte Jones*, 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). **To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed.** If the document is in a language other than English and the examiner seeks to rely on that document, **a translation must be obtained** so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. **The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection.** The rationale for this is several-fold. It is not uncommon for a full text document to reveal that the document fully anticipates an invention that the abstract renders obvious at best. The converse may also be true, that the full text document will include teachings away from the invention that will preclude an obviousness rejection under 35 U.S.C. 103, when the abstract alone appears to support the rejection. An abstract can have a different effective publication date than the full text document. Because all patentability determinations are fact dependent, obtaining and considering full text documents at the earliest practicable time in the examination process will yield the fullest available set of facts upon which to determine patentability, thereby improving quality and reducing pendency. When both the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) may be supplied in the next Office action. Whether the next Office action

may be made final is governed by MPEP § 706.07(a). (Boldface emphasis added. Underlining emphasis in original.)

It is respectfully submitted that it is clear that the Examiner is relying only on the abstract as the basis for the rejection, as only the abstract was listed on the PTO-892 and supplied to Applicant.

The undersigned notes that Ito has no known English language equivalents and no machine translation is available from the Japanese Patent Office website.

A complete copy of Ito is attached to this response.

As noted above with respect to MPEP § 706.02 II, as both the underlying document, Japanese Patent Application Publication 62-204527, and the English abstract are both prior art, it is inappropriate for the Examiner to rely solely on the English abstract as a basis for rejection. As also noted above, the complete document (JP 62-204527) must be analyzed and should the Examiner seek to rely on the complete document, a translation must be obtained so that the record is clear precisely which facts the Examiner is relying on.

In the event the Examiner maintains the rejection based on Ito, it is respectfully submitted that a translation must be provided to Applicant. In the absence of such a translation, it is respectfully submitted that the rejection based on Ito must be withdrawn.

In order to advance prosecution of the application, the following remarks are provided.

Ito does not anticipate or render obvious either claims 1 or 13 because Ito does not disclose or suggest a sensor configured to detect luminescent radiation radiated by at least one region of an area on a component of the apparatus traversed by the unpatterned beam or the patterned beam, wherein the component is a reflector within one of the projection system and the radiation system.

The sensor 2 above the light source 1 measures the decrease in light emitting intensity of the light source 1, it does not detect luminescent radiation radiated by at least one region of an area on a component of the apparatus traversed by the unpatterned beam or the patterned beam.

The photosensor 12 measures the emitting intensity to a wafer 8, it does not detect luminescent radiation radiated by at least one region of an area on a component of the apparatus traversed by the unpatterned beam or the patterned beam.

The photosensor 11 measures the reflecting intensity from the wafer 8, i.e. it measures the intensity of the reflected radiation, not luminescent radiation radiated by at least one region of an area on a component.

It appears that the reference numbers 14, 15, 16 and 17 of Ito also refer to photosensors. However, there is no disclosure or suggestion from the abstract of Ito that these photosensors detect luminescent radiation radiated by at least one region of an area on a component.

Reconsideration and withdrawal of the rejection over Ito are respectfully requested.

Claims 1-12 were rejected under 35 U.S.C. § 102(e) over Mulkens (European Patent Application Publication 1 235 114 A1). The rejection is respectfully traversed.

Under 35 U.S.C. § 102(e), only U.S. patents, published U.S. patent applications, and international (PCT) applications designating the U.S. and published in English may be used as prior art. European Patent Application Publication 1 235 114 A1 to Mulkens et al. is not any of these and may not be used as prior art under 35 U.S.C. § 102(e).

However, the undersigned respectfully notes that European Patent Application Publication 1 235 114 A1 is equivalent to U.S. Patent Application Publication 2002/0109103, submitted with the Information Disclosure Statement filed with the application. U.S. Patent Application Publication 2002/0109103 does qualify as prior art under 35 U.S.C. § 102(e). However, as noted by the Examiner, U.S. Patent Application Publication 2002/0109103 A1 is assigned to ASML Netherlands B.V. (although not listed on the publication), as is the instant application. Accordingly, under 35 U.S.C. § 103(c), U.S. Patent Application Publication 2002/0109103 A1 may not be used in a rejection under 35 U.S.C. § 103(a).

The following remarks refer to European Patent Application Publication 1 235 114 A1.

Mulkens et al. do not disclose or suggest a sensor configured to detect luminescent radiation radiated by at least one region of an area on a component of the apparatus traversed by the unpatterned beam or the patterned beam, wherein the component is a reflector within one of the projection system and the radiation system. As disclosed in paragraph [0026] and Figure 2, the sensors 11 and 12 detect the luminescent radiation emitted by the lens element 10. The lens element 10 is clearly refractive, i.e., not reflective. See the first sentence of paragraph [0026] which discloses that the beam passes through the lens 10. See also paragraphs [0011] and [0025] which disclose that the lens may be calcium fluoride or quartz, which are clearly refractive, not reflective, materials.

With respect to claim 11, the Examiner is incorrect that UV lithography systems are inherently contained in a vacuum chamber. UV radiation is not absorbed by gases, such as air, and there is no need to place UV lithography systems in vacuum chambers. In addition, the Examiner has not provided a basis in fact and/or technical reasoning to support the

determination that a vacuum chamber is necessarily present in Mulkens et al. See MPEP § 2112.

Reconsideration and withdrawal of the rejection of claims 1-12 over Mulkens et al. are respectfully requested.

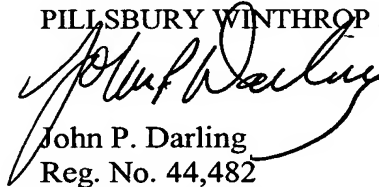
In view of the above amendments and remarks, it is respectfully submitted that all of the claims are allowable and the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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Attachment: Ito (JP 62-204527)